

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID WOODS,

Plaintiff,

v.

JOHN OR JANE DOE, M.D.,  
SUPERINTENDENT, Downstate Correctional  
Facility,

Defendants.  
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**ORDER OF DISMISSAL**

21 CV 203 (VB)

Copies Mailed/Faxed 10/1/21  
Chambers of Vincent L. Briccetti. *VB*

On January 11, 2021, plaintiff commenced this action. (Doc. #1). On March 30, 2021, the Court issued an Order of Service. (Doc. #7). Among other things, the Order instructed plaintiff, who is proceeding pro se and in forma pauperis, to provide the New York State Office of the Attorney General (“NYAG”) with more detailed, descriptive information for the unidentified “John or Jane Doe” defendant he intended to sue in this case, including the date on which that defendant observed plaintiff at Downstate Correctional Facility, to assist the NYAG in properly identifying that defendant pursuant to Valentin v. Dinkins, 121 F.3d 72, 76 (2d Cir. 1997). (*Id.*). The Court instructed plaintiff to provide this information by April 29, 2021. (*Id.*). The Clerk of Court mailed a copy of this Order to plaintiff. (Doc. #9).

By letter dated June 9, 2021, the NYAG informed the Court that plaintiff had not provided the NYAG with additional information regarding the identity defendant “John or Jane Doe, M.D.,” or the date on which the alleged incident occurred. (Doc. #14). In other words, it appeared plaintiff had failed to comply with the Court’s March 30, 2021, Order.

Thus, by Order dated June 9, 2021, the Court instructed plaintiff to write a letter to the Court and to the NYAG providing the following information by no later than July 9, 2021:

- a. more detailed, descriptive information for the unidentified “John or Jane Doe” defendant he intended to sue in this case, including the date on which that defendant observed plaintiff at Downstate Correctional Facility, to assist the NYAG in properly identifying that defendant, and
- b. the dates on which the incidents alleged in the complaint occurred.

The Court noted in bold and underlined typeface that if plaintiff failed to provide the above information by July 9, 2021, both to the Court and to the NYAG, the Court may dismiss this case in part or in full for failure to prosecute or comply with Court Orders. (Doc. #16). The Court mailed a copy of this Order to plaintiff. (*Id.*).

As of August 16, 2021, plaintiff had not submitted this letter to the Court, meaning he had not complied with the June 9, 2021, Court Order. This was the second Court Order plaintiff has failed to comply with.

In addition, on July 12, 2021, defendant Superintendent of Downstate Correctional Facility moved to dismiss plaintiff's complaint and served on plaintiff copies of the motion and supporting documents. (Docs. ##18, 19-1). Plaintiff's opposition to the motion was due July 29, 2021. See Local Civil Rule 6.1(b); Fed. R. Civ. P. 6(d).

As of August 16, 2021, plaintiff had failed to oppose the motion or seek an extension of time to do so.

Accordingly, on August 16, 2021, the Court issued a sua sponte Order extending to September 16, 2021, plaintiff's time to (i) provide the additional information necessary to identify defendant "John or Jane Doe, M.D.," and (ii) oppose the motion to dismiss, or seek an extension of time in which to do so. The Court warned in bold and underlined typeface that if plaintiff failed to do either of the tasks outlined in (i) and (ii) by September 16, 2021, the Court would dismiss his claims against all defendants.

To date, the Court has not received correspondence from plaintiff regarding either the "John or Jane Doe" defendant, or the pending motion to dismiss. Indeed, since filing a change of address notice dated March 29, 2021, noting he was incarcerated at Cape Vincent Correctional Facility (Doc. #10), plaintiff has not sent any communication to the Court. The New York State DOCCS inmate lookup indicates that plaintiff is still incarcerated at Cape Vincent Correctional Facility. Moreover, none of the Court Orders mailed to plaintiff were returned to sender as undeliverable.

Moreover, by letter dated September 29, 2021, the NYAG stated that as of that date, plaintiff had neither provided the NYAG with the information necessary to identify the John or Jane Doe defendant nor responded to the pending motion to dismiss. Defense counsel also requested that the Court dismiss this case for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). (Doc. #21).

Thus, plaintiff has wholly disregarded a third Court Order and has failed to take any steps to prosecute this action.

Accordingly, it is HEREBY ORDERED:

1. All claims against defendant "John or Jane Doe, M.D." are dismissed for failure to prosecute and for failure to comply with Court Orders. See Fed. R. Civ. P. 41(b).

2. All claims against defendant Superintendent of Downstate Correctional Facility are dismissed for failure to prosecute and for failure to comply with Court Orders. See Fed. R. Civ. P. 41(b).

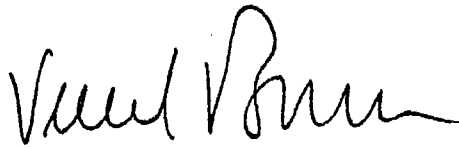
The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

The Clerk is instructed to close this case.

Dated: October 1, 2021  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge